

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OPERATING ENGINEERS' LOCAL 324
FRINGE BENEFIT FUNDS and TRUSTEES
OF THE OPERATING ENGINEERS'
LOCAL 324 FRINGE BENEFIT FUNDS,

Plaintiffs,

Case No. 04-74859

v.

Hon. Gerald E. Rosen

CHIE CONTRACTORS, INC., GERALD M. CHIE
and JAMES B. CHIE,

Defendants.

Jeffrey M. Lesser (P33298)
Attorney for Plaintiffs
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PLAINTIFFS' MOTION FOR ORDER
RESTRAINING TRANSFER OF PROPERTY
SUPPLEMENTARY TO JUDGMENT

Plaintiffs move this Honorable Court for an Order restraining Defendants from transferring property for the following reasons:

1. In the February 23, 2005 Consent Judgment and subsequent Orders of this Court, Defendants were ordered to satisfy their obligations to Plaintiffs.
2. The Consent Judgment and subsequent Orders remain in force and have not been satisfied, as Defendants have failed to pay money owing to Plaintiffs.

3. The relief sought in this Motion will assist Plaintiffs in obtaining satisfaction of the judgment.

4. Plaintiffs' counsel has made reasonable efforts to confer with Defendants in an effort to obtain the answers to requested discovery without Court action, and explain the nature of this motion and its legal basis, but Plaintiffs' counsel has been unable to conduct such a conference.

WHEREFORE, Plaintiffs pray for this Honorable Court to issue an Order restraining Defendants from transferring or disposing of any of their property, whether now owned or hereafter acquired or becoming due to them, until further Order of this Court, exclusive of property exempt by law from application to satisfaction of the judgment.

Respectfully submitted,

s/Jeffrey M. Lesser
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Dated: August 7, 2008

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SOUTHERN DIVISION

OPERATING ENGINEERS' LOCAL 324
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BRIEF IN SUPPORT OF PLAINTIFFS' MOTION
FOR ORDER RESTRAINING TRANSFER OF
PROPERTY SUPPLEMENTARY TO JUDGMENT

Under FED. R. CIV. P. 69, incorporating MCLA § 600.6104, this Court maintains broad discretion to take action to subject assets of judgment debtors such as Defendants toward satisfaction of judgment. Furthermore, under Section 502(g)(2)(E) of ERISA, 29 U. S. C. § 1132(g)(2)(E), this Court maintains discretion to grant such legal or equitable relief as it deems appropriate. The Sixth Circuit Court of Appeals has observed that, "Congress intended that the enforcement provisions [of 29 U. S. C. § 1132] should have teeth: the provisions should be

liberally construed to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Act.” *Laborers Fringe Benefit Funds – Detroit and Vicinity v. Northwest Concrete and Construction, Inc.*, 640 F. 2d 1350, 1352 (6th Cir. 1981) (internal quotation and citation omitted).

For the reasons stated above and in Plaintiffs’ Motion, Plaintiffs assert that it is appropriate for this Court to grant the relief requested in their Motion for Order Restraining Transfer of Property Supplementary to Judgment, in order to enforce the Consent Judgment issued by this Court.

Respectfully submitted,

s/Jeffrey M. Lesser
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Dated: August 7, 2008

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Certificate of Service

I hereby certify that I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Date of Service:	
Served Upon:	

and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

Date of Service:	August 7, 2008
Served Upon:	Mr. Gerald M. Chie President Chie Contractors, Inc. 10195 Carpenter Road Milan, Michigan 48160 Mr. James B. Chie Chie Contractors, Inc. 10195 Carpenter Road Milan, Michigan 48160

s/Jeffrey M. Lesser

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